Contents

SECTION	Annotation
CO-BRAND LICENSE AGREEMENT	This is an agreement whereby the owner of a well-known mark (with superior leverage) is licensing it to a manufacturer so the manufacturer may manufacture products co-branded with the licensed mark and its own mark. Such an arrangement is often referred to as a toll manufacturing and the manufacturer is referred to as a toller. The terms of this agreement may be modified to cover the transaction in the other direction as well, so that each manufacturer may use the other's mark. During the live review of this contract several commentators were of the opinion that this agreement could be stronger in protecting the mark, namely by defining to which party goodwill will inure to from the co-brand (in and of itself a new form of IP – a third brand). It was speculated that the licensor was possibly an equity owner of the licensee manufacturer, or had some other agreement to eventually procure the licensee manufacturer. This agreement is intended for educational use as a sample of a first draft by the licensor's attorney. The sample is intended to be industry, technology/product and transaction (e.g., size, length and purpose of the transaction) agnostic; a final agreement may have terms unique to the industry and important to reference.
THIS CO-BRAND LICENSE AGREEMENT ("Agreement") is made as of the # day of MONTH, YEAR (the "Effective Date"), by and between Licensor, with its principal place of business at ADDRESS (hereinafter referred to as "Licensor"), and	It may be wise to verify in a register that the correct entities are being used. Some companies keep their marks in an IP holding company for tax

Licensee Manufacturer, with its principal place of business at ADDRESS (hereinafter referred to as "Licensee Manufacturer").	purposes, while a regional co-branding agreement like this might be orchestrated by a regional affiliate, with the IP holding company not party to the agreement. There are different ways to structure it, verify with a tax specialist.
WITNESSETH	
WHEREAS, Licensor is the owner of the trademark "Licensor Mark" and certain logos and other marks which incorporate such trademarks, as shown on Annex "B" hereto; and	This is somewhat redundant to Section 6.2 rep that the Licensor has the right to grant licenses under the Mark. That section isn't explicit. Again, this is a high-leverage Licensor.
WHEREAS, Licensee Manufacturer is the owner of the trademark "Licensee Manufacturer" ("Licensee Manufacturer Mark") and manufactures and sells Product under the Licensee Manufacturer Mark; and manufactures and sells products for other brands, and co-packing and private branding arrangements with others; and [4]	The intent of the agreement is that the licensed mark is co-branded with the toll manufacturer's mark. Accordingly, the toller affirms they own the mark. The agreement includes a number of termination options to mitigate damage to the licensed mark should the toller fail to actually own its mark, uphold the quality requirements or fail for some other reason. Accordingly, it may be enough for the licensor that there is no other express warranty of merchantability in the agreement.
WHEREAS, the Parties desire to enter into the arrangement whereby product will be manufactured, marketed and sold by Licensee Manufacturer under a co-brand determined as provided in Section 1.1(a) in the definition of "Co-Brand"; and	The scope of the product to be manufactured can be elaborated on once the field is understood. The scope has a bearing on the exclusivity provisions occurring later in the agreement. See Section 2.5.F
WHEREAS, to obtain from Licensor a license to use the Licensor trademark in connection with such manufacture, marketing and sale of the product, Licensee Manufacturer recognizes the vital importance of protecting Licensor's exclusive and valuable rights in and to said trademark and the goodwill symbolized thereby.	This recital is an adjunct to quality control provisions set forth below. Insofar as it is redundant it's useful to capture intent.
NOW, THEREFORE, in consideration of the covenants and promises hereinafter contained, Licensor and Licensee Manufacturer hereby agree as follows:	

ARTICLE 1: DEFINITIONS	
1.1 For purposes of this Agreement, the following terms shall be defined as follows:	
(a) "Co-Brand" means such trademark and/or branding that incorporates the Licensor Mark (as hereafter defined) and the Licensee Manufacturer Mark as the Parties may hereafter mutually agree upon. Without limiting either party's discretion in determining whether or not to agree to a specific proposed "Co-Brand," the parties currently anticipate that the Co-Brand would be in the spirit of that reflected on Annex "A," incorporated herein by reference.	The Annex is an important scope document and should include an extensive list of all the packaging designs contemplated in the final marketed product.
(b) "License Year" means the period commencing on the Effective Date and ending on the anniversary thereof for any calendar year that this Agreement is in effect.	
(c) "Licensor Mark" means Licensor's federally registered trademark, Registration Number #,###,### and Application No. ##/###,### and Licensor's logo as set forth in Annex "B" hereto, incorporated herein by reference.	A license simply to the logo might be overbroad. Again, it is important to use the Annex to limited the scope of the license grant. If the registered mark is stylized, the Annex may not be needed, however if the Licensor has designed or approved specific packaging, the Annex would be useful to capture that.
(d) "Net Sales" means Licensee Manufacturer's invoice price for the Product to the customers, less any applicable variable distribution charges, rebates paid to the customer, any Product related deduction taken by the customer in the course of business, and cash payment term discount applicable to such customers as of the Effective Date of this Agreement as mutually agreed by the Parties on a customer by customer basis. Invoices will be included in the royalty calculation after the invoice has been paid in full, including rebates or other approved Product related deductions.	It is important to understand how net sales are actually accounted for, to make sure the definition is appropriate. Recommend aligning with tax and finance to ensure that this is a workable structure. Legal has to work with Accounting to ensure that the net sales definition can work in practice.
(e) "Party" or "Parties" means Licensor and/or Licensee Manufacturer.	
(f) "Product" means any and all product manufactured and directly or indirectly sold by or on behalf of Licensee Manufacturer to Licensee Manufacturer's customers under the Co-Brand.	This defined term is limited to the product the Licensee Manufacture actually makes. This definition of product is another form of restricting the Licensee Manufacturer from sublicensing.

(g) "Royalty" means the royalty of #### percent (#%) on Net Sales of Product to any customer of Licensee Manufacturer.	Be sure the verify the royalty strategy with a colleague in tax and finance.
(h) "Term" means the period commencing on the Effective Date and expiring on the fifth anniversary thereof, subject to any extension thereof pursuant to Section 2.2 of this Agreement.	
(i) "Territory" means [the fifty States of the United States and its territories].	
ARTICLE 2: GRANT OF LICENSE	
2.1 Grant. Subject to the terms and provisions set forth in this Agreement, Licensor hereby grants to Licensee Manufacturer, and Licensee Manufacturer hereby accepts, a non- transferable, non-assignable license, to use the Licensor Mark in the Territory during the Term solely in connection with the manufacture, marketing and sale of the Product, but only as incorporated into, or used in conjunction with, the Co-Brand. Licensee Manufacturer hereby agrees not to use the Licensee Manufacturer Mark in connection with any product [not defined] other than in conjunction with the Co-Brand Product marketed or sold by Licensee Manufacturer in the Territory during the term of this Agreement.	While there is no restriction on sublicensing, as referenced above the nature of the products for which the License applies is limited, having a similar effect to a restriction on sublicensing. The Licensee Manufacturer is not restricted from sublicensing rights as needed to third party service providers, however they cannot transfer their rights.
2.2 Term. The initial Term of this Agreement shall be for a period of five (5) years commencing as of the Effective Date and ending as of MONTH DAY, YEAR. At the request of either party, one year prior to the end of the initial (or then current renewal) Term, the parties shall meet to discuss extending the Term. The Term of this Agreement may be extended only by mutual agreement of the parties. However, the Agreement shall expire at the end of the initial (or then current renewal) Term if the parties have not agreed to an extension on or prior to close of business on such date as is 180 days prior to the end thereof (with respect to the initial Term, (MONTH-6) DAY, YEAR)	The 0.5 year lock-out period may be adjusted to reflect the time actually considered necessary to arrange a successive relationship.

2.3 Limitations on Use. Licensee Manufacturer has no right to nor shall it use the Licensor Mark with any items other than the Product [2] in the form and composition in existence [1] on the Effective Date or as otherwise approved by Licensor. Licensee Manufacturer has no right to use the Licensor Mark in connection with the sale of the Product outside of the Territory or to any person or entity which Licensee Manufacturer knows or has reason to know (based upon facts known to its management, but without any independent obligation to investigate) will sell or market the Product outside the Territory unless otherwise agreed between the Parties.[3]	[1] In this agreement, the Licensee Manufacturer already has a market-ready product that was contemplated during the negotiation. If there is a chemical formula or code-name, it might make sense to reference that in the definition of Product. [2] The Licensor Mark may only be used in conjunction with the Licensee Manufacturer Mark as part of the Co-Brand – this is because of the definition of Product. [3] These territorial limits may be more strict than the laws of exhaustion permit. It is advisable to align with your anti-trust expert before including this condition; as local laws vary. Note that exhaustion laws can also vary based on subject matter.
2.4 Limitations on Licensing. During the Term, Licensor will not license, or in any other manner grant permission, to any other manufacturer to use the Licensor Mark co-branded on any product similar to the Product that is sold in the Territory. Notwithstanding this provision, Licensor reserves and shall have the right to grant to any other person or entity the right to use the Licensor Mark as long as such use is not in connection with such a product and no consent or permission of Licensee Manufacturer shall be necessary.	Confirmation that there is a sublicense by virtue of failure to expressly limit same, and by virtue of the behavior that is not restricted by this limitation, namely use of the Licensor Mark on Product.

2.5 Use of Other Trademarks. During the Term of this Agreement, neither Licensee Manufacturer nor any subsidiary or affiliate of Licensee Manufacturer will use on products in the field within the Territory, or in connection with advertising or promotional materials therefor, any mark or name, except the Co-Brand on the Product [1] [2]; provided, however,. Licensee Manufacturer may sell products in the field under its owned [named] marks (with such products in the field as currently formulated with minor adjustments being acceptable, when sold under such marks) [3], and under private label and co-packing arrangements [4]. Licensee Manufacturer will use its best efforts [5] to cause customers currently purchasing products for sale under a brand other than the Co-Brand to convert to the Product and/or to otherwise sell such products in the field to consumers under the Co-Brand, subject to prior approval of Licensor as well as the terms of this Agreement (including without limitation, the quality standards set forth herein).	[1] Reminder it is only the Co-Brand, only on the Product. This clause is in effect a restriction on what can be manufactured. [2] This is a field restriction. E.g., only on shoes, not on shirts.or clarification, "Field" could be a defined term. [3] Clarification that the restriction does not extend to pre-existing sales channels and marked products. [4] The Licensee Manufacturer can have made product in the field bearing only its mark or some other mark. This is an important clarification for a toller, however it doesn't change a basic attribute of this agreement – the Licensed Manufacturer is dramatically limiting how it may sell its products. [5] If this conversion is important, it may be wise to add some additional detail as to what minimum efforts are.
Notwithstanding the foregoing limitations, this Section 2.5 shall not prohibit Licensee Manufacturer nor or any of its subsidiary or affiliate companies from investing in or acquiring an entity which sells product in the field if the product in the field sold by such entity is not under the Licensee Manufacturer Mark and after the investment or acquisition Licensee Manufacturer uses its best efforts to cause customers then purchasing product from such entity to convert to the Product and/or to otherwise sell such product in the field to consumers under the Co-Brand, subject to the terms of this Agreement (including without limitation, the quality standards set forth herein).	Depending on the law and the circumstances this could ameliorate anti-trust concerns.
2.6 Registration of Co-Brand by Mutual Consent. Neither Party shall apply for formal registration of the Co-Brand with the United States Patent and Trademark Office, or any other governmental entity, without the prior written consent of the other Party, and in any event, the parties will be co-registrants of the Co-Brand. Neither party shall commercially use, or permit the commercial use of, the Co-Brand upon termination of this Agreement, except as permitted in Section 8.6 hereof.	This clause forces the parties to work together on registration.

ARTICLE 3: QUALITY CONTROL	
3.1 Quality Control; Inspections; Approvals. In order to protect the goodwill and reputation associated with the Licensor Mark, Licensee Manufacturer covenants, agrees, represents and warrants as follows, at a minimum that:	This is a revocable license subject to continued adherence to the quality standards. It is advisable to have an extensive quality control manual to share with the Mark user.
(a) The nature and quality of the Product, all services rendered by Licensee Manufacturer in connection with the Product and the Co-Brand, all goods sold under the Co-Brand; and all related advertising, packaging, labels, publicity materials and promotional materials used by Licensee Manufacturer in connection with the Product, the Co-Brand or the Licensor Mark, shall conform to the standards established and/or approved by Licensor, including but not limited to any health, cleanliness, sanitation and/or quality standards, and including but not limited to those set forth in the Licensee Manufacturer Quality Requirements Manual as set forth in Anne“x ""C" hereto (as updated from time to time upon written notice to Licensee Manufacturer). Without limiting the foregoing, Licensor shall have the right to approve or disapprove any changes in, additions to or deletions to the following aspects of the Product: [for example in the case of a food product: flavors, line extensions or SKU's in which the Product is manufactured, marketed and sold].[1]	[1] Giving the Licensor an opportunity to validate Product not contemplated at the time of the Effective Date is a thoughtful way to maintain quality standards and to avoid dilution to lower quality standards should the Licensee Manufacture pursue a wide-adoption/commodity strategy.
(b) Notwithstanding any other provision of this Agreement, Licensor shall have no liability to Licensee Manufacturer or third parties with respect to the Product manufactured or sold by Licensee Manufacturer, its agents, contractors or sub-contractors or its customers.	This is the only disclaimer as to liability for problems with the Product in this template agreement. Consider specifying the kinds of liabilities that are contemplated here, such as product liability, negligence, etc.
(c) Licensee Manufacturer will abide by any laws, rules, regulations or general industry standards governing the operation of a business, including, but not limited to, procedures on health, cleanliness and sanitation.	Whether or not you include this term, or modify for certain export or health and safety restrictions, depends on the use case.
(d) All future products produced under this Agreement will be of the quality and nature equivalent to, or better than, those approved by Licensor as a result of Licensor's testing of the Product prior to entering into this Agreement.	This template contemplates a validation phase preceding during which the Licensor certifies that the Licensee Manufacturer Product meets their quality expectations.

(e) Licensee Manufacturer shall cooperate with Licensor in facilitating Licensor's control of such nature and quality by permitting Licensor, as Licensor requests, to inspect Licensee Manufacturer's manufacturing facilities (or those of any contract manufacturer utilized by Licensee Manufacturer) or other facilities of Licensee Manufacturer and by supplying Licensor, as Licensor reasonably requests, with specimens of use of the Product, the Co-Brand and the Licensor Mark, and of all materials showing the Product and/or services associated with the Product, the Co-Brand or the Licensor Mark.	Inspection rights are more critical when it is difficult for the Licensor to procure the Product on the free market and evaluate quality using those examples.
(f) If an event has occurred with respect to the Product that may be reasonably expected to damage or denigrate the Licensor Mark or to create a substantial health risk, Licensee Manufacturer shall direct a market withdrawal, stock recovery and/or recall of any such Product. Upon mutual agreement Licensee Manufacturer shall direct a market withdrawal, stock recovery and/or recall of any Product which does not materially comply with the quality requirements of this Agreement. In addition, Licensee Manufacturer shall direct a recall of any Product in the event that a recall of the Product is required, ordered or recommended by any court or government agency or any applicable law or regulation, for any reason. Licensee Manufacturer shall bear primary responsibility for market withdrawal, stock recovery and/or recall procedures and expenses, however the Parties agree that no royalty shall be applicable to any Product withdrawn, recovered or recalled. Any request for a market withdrawal, stock recovery and/or recall by Licensor hereunder shall not prejudice any other or additional right or remedy Licensor may have under this Agreement.	This is a strong remedy.
(g) Licensee Manufacturer shall submit to Licensor, without charge, for inspection and approval by Licensor, a sample of each advertisement, package, label, tag and piece of publicity or promotional material that uses the Licensor Mark or the Co-Brand at each of the following stages of development: concept, mechanical or lay-out, finished art, pre-production and final product. Licensee Manufacturer shall not use any advertisement, package, label, tag, publicity or promotional material for the Product using the Co-Brand, the Licensor Mark or the Licensor name, which has not been approved by Licensor in writing.	This is a smart approach to review the project as it progresses, pre-market.

(h) Without limiting any other provision of this Agreement, the manufacture, distribution, promotion and sale of the Product and any tags, labels, packaging, advertising and promotional materials thereof shall comply with all applicable laws and regulations, including but not limited to, any industry standards.	
(i) Licensee Manufacturer shall not use a personality or celebrity to endorse or promote the Product unless and until it obtains approval in writing from Licensor.	
(j) Licensee Manufacturer's policy of sale and distribution of the Product shall be of high standard and shall in no manner reflect adversely upon the good name of Licensor or upon the goodwill and reputation associated with the Licensor Mark.	
(k) Both parties shall use their best efforts to promptly handle any requests for approvals required under this Agreement (for example, approvals under Section 5.3; but excluding, without limitation, amendments to this Agreement). Unless the Parties agree otherwise, response to requests for approval must be given within ten (10) business days from the date of request. Lack of such response within ten (10) business days from the date of the second notice of such request (which second request shall not be given prior to ten (10) business days from the date of the first request) shall constitute approval of the request.	

ARTICLE 4: OWNERSHIP OF THE MARK	This draft is silent as to ownership of the Co-Brand. It is worth contemplating who owns the Co-Brand. If the Licensor Mark is the more valuable mark, they have the most to lose. The Licensor could own the Co-Brand, or it could be owned jointly, however the right to use it should be restricted. Section 3.1(g) does provide a restriction. Note, although it may be redundant to Section 5.3 of the Lanham act, the drafter could include the following clause: *The parties intend that the benefits of the Licensee Manufacturer's use of the Licensee Mark [and the Co-Brand] accrue to the Licensor.* With regard to the bracketed section, since the co-brand is a third kind of mark, and the licensor has more leverage than the Licensee Manufacturer, the drafter may want to clarify that goodwill from the Co-Brand inures to the benefit of the Licensee.
4.1 Ownership of Licensor Mark. Licensee Manufacturer acknowledges and agrees that:	
(a) Licensee Manufacturer shall acquire no ownership rights in or to the Licensor Mark by virtue of this Agreement or otherwise and all use by Licensee Manufacturer of the Licensor Mark shall be deemed to inure to the benefit of Licensor.	
(b) Licensee Manufacturer shall not, during the Term or thereafter, directly or indirectly, contest or aid in contesting Licensor's ownership of the Licensor Mark or the validity of the Licensor Mark, and	Agreement to not join a suit against the licensor to invalidate the Mark.
(c) Licensee Manufacturer shall not, during the Term or thereafter, do anything inconsistent with or which impairs Licensor's ownership of or the validity of the Licensor Mark.	

4.2 Cooperation in Enforcing Ownership Rights. At Licensor's request, Licensee Manufacturer will cooperate fully, at Licensor's expense, in confirming, perfecting, preserving and enforcing Licensor's rights in the Licensor Mark.	Licensee Manufacturer may have to provide evidence of use materials. If that is contemplated, and the Licensee Manufacturer is not sophisticated, it may be wise to clarify that this is one instance in which this comes to bear, and what is required to fulfill the requirements of the relevant trademark registration office.
4.3 Unauthorized Use. Licensee Manufacturer agrees to notify Licensor of any unauthorized use, unfair competition or other infringement by other persons relating to the Co-Brand or the Licensor Mark promptly after it comes to Licensee Manufacturer's attention. Licensor agrees to notify Licensee Manufacturer of any unauthorized use, unfair competition or other infringement by other persons relating to the Co-Brand or the Licensee Manufacturer Mark promptly after it comes to Licensor's attention. The Parties shall have the right to determine what action, if any, will be taken to remedy any infringement(s) of or related to their respective trademarks or other intellectual property rights, either standing alone or as incorporated in the Co-Brand. The Parties shall not take any action with respect to such infringements of the other party's trademarks or other intellectual property, standing alone, without the prior written consent of the other Party. Notwithstanding the foregoing, the Parties agree to cooperate in good faith in determining what action to take regarding any infringement of the Co-Brand.	Requiring written consent of a third party's unauthorized use of the mark ensures that the parties move together in an assertion action.
ARTICLE 5: ADDITIONAL OBLIGATIONS OF LICENSEE MANUFACTURER	
5.1 Royalty Payment. During the Term, and thereafter as provided in Section 8.9 hereof, Licensee Manufacturer shall pay a Royalty payment to Licensor on the twentieth (20th) day of each month following the Effective Date with respect to Net Sales of Product made during the previous month. Licensee Manufacturer shall provide an accounting with each such Royalty payment showing a breakdown of the Royalty amount and other mutually agreed documentation. Licensor shall have the right to question and confirm the amount of a Royalty payment or any part thereof and the right to inspect Licensee Manufacturer's books and records relating to such Royalty payment for a period of one (1) year following such Royalty payment.	It may be worthwhile to align with colleagues in accounting to establish the best way to conduct these auditing exercises.

5.2 Marketing. Licensee Manufacturer agrees to use its best efforts, consistent with its past practices and past financial expenditures, for marketing, advertising, promoting and publicity for the Product.	The relative simplicity of this clause reflects that: 1) that the parties are comfortable with the expected level of marketing, and 2) the Licensee Manufacturer is incentivized to market. Alternatively, the agreement could provide for minimum sales or other metrics,
5.3 Approval of Formats, etc. Licensee Manufacturer shall use the Licensor Mark only in the composition, lettering, logos, print styles, forms and formats which have received the prior written approval of Licensor.	Redundant but useful clarification.
5.4 Insurance Coverage. Licensee Manufacturer shall obtain from a reputable insurance carrier acceptable to Licensor liability insurance with limits not less than $$,$$$,$$$ (U.S. dollars) (per person, per injury) in order to protect and insure Licensor and Licensee Manufacturer against any claims or liabilities with which either or both of them may be charged because of personal injuries or injuries suffered by any person or entity, resulting from the ingestion of the Product or the manufacture or sale thereof, whether during the Term or thereafter. Licensor shall be named in the policy of such insurance as an additional insured and such policy shall provide that the insurance cannot be cancelled without the insurer giving Licensor written notice thereof at least thirty (30) days prior to the effective date of the cancellation and that the insurance covers the contractual liability of Licensee Manufacturer to Licensor under the provisions of paragraph 5.5 below. Licensee Manufacturer shall maintain such insurance in full force and effect throughout the Term and for at least three (3) years thereafter. Within ten (10) days after the date this Agreement is executed and on the first day of each License Year thereafter, Licensee Manufacturer shall deliver to Licensor a certificate of insurance evidencing that such insurance is in full force and effect and that it cannot be cancelled without the insurer giving Licensor written notice thereof at least thirty (30) days prior to the effective date of the cancellation. The insurance described in this Section shall be primary and shall not be subject to contribution by any other insurance, which may be available to Licensor.	Worthwhile to align with insurance expert within your organization to ensure that this clause is appropriate.

5.5 Indemnity. Licensee Manufacturer agrees to indemnify Licensor and its directors, officers, employees and agents and hold them harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including attorneys' fees) ("Damages") arising out of or resulting from or in connection with Licensee Manufacturer's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions (or such actions or omissions of Licensee Manufacturer's agents, employees, contractors, or consultants). In the event that a recall of the Product is required, ordered or recommended by any court or government agency or any applicable law or regulation, for any reason, Licensee Manufacturer shall comply with such requirement, order or recommendation and shall bear all the expenses thereof. This Section shall survive the expiration, termination, breach or alleged breach of this Agreement.	Clear disavowal of agency-like liability for any damages experienced by the Licensee Manufacturer in making the Product. This disavowal makes sense as the Licensor really only controls how the mark is used, and not how the manufacturing is conducted. Damages can vary based on local laws; be sure to review and accommodate and specific remedies.
ARTICLE 6: LICENSOR'S OBLIGATIONS	
6.1 Notification of Unauthorized Use. Licensor agrees to notify Licensee Manufacturer of any unauthorized use, unfair competition or other infringement by other persons relating to the Co-Brand or the Licensor Mark as incorporated into the Co-Brand promptly after such infringement comes to Licensor's attention.	
6.2 Indemnity. Licensor agrees to indemnify Licensee Manufacturer and its directors, officers, employees and agents and hold them harmless from and against any and all Damages arising out of or resulting from or in connection with Licensor's (1) performance or non-performance of its obligations under this Agreement; or (2) negligent or willful acts or omissions of Licensor (or such acts or omissions of Licensor's agents, employees, contractors, or consultants). This Section shall survive the expiration, termination, breach or alleged breach of this Agreement.	A more specific warranty could be added. For example, “Licensor represents and warrants as of the Effective Date and covenants, as applicable, the following: (a) Licensor has the right to grant the license; (b) Licensor has the right to enter into this Agreement; and (c) the Mark has been assigned to Licensor. Licensor should consider including a provision for the limitation of its damages, whether under contract, warranty, indemnification, tort or other legal theory.

ARTICLE 7: MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT	
7.1 Confidential Information. The Parties acknowledge and agrees that the idea, composition of and the methods of manufacture of the Product, as well as product development, testing, marketing, quality standards, and any and all other business or strategic information relating to the Product, the Co-Brand, the Licensor Mark or the business of either Party hereto (collectively, the "Information"), is proprietary, confidential and/or competitively sensitive and shall be kept secret. Neither Party shall use the Information except as contemplated by this Agreement without the prior written approval of an authorized representative of the other Party.	It might make sense to include a “confidential” notification and marking requirement if the Licensor has operations in the same field as the Licensee Manufacturer.
7.2 Non-Disclosure. The Parties agree that either Party may disclose the Information to those of its directors, officers, employees and representatives who need to know such Information for the purpose of maintaining or evaluating the relationship between Licensee Manufacturer and Licensor. Prior to disclosing this Information, however, each Party will inform the person to receive the Information of its confidential nature and the obligations of nondisclosure and confidentiality as defined herein in this Article 7.	
7.3 Term of Non-Disclosure Obligation. The obligations of nondisclosure and confidentiality undertaken by each Party under this Agreement shall continue for the Term of this Agreement and for a period of five (5) years following the termination of this Agreement.	
7.4 Limitations. The Parties agree and acknowledge that the provisions of Sections 7.1 - 7.3 above shall not apply to any Information which (i) at the time of disclosure or thereafter is in the public domain or becomes generally known to the public through no fault of either Party; (ii) was available to the receiving Party on a non-confidential basis from a source other than the disclosing Party, providing that such source was not known by the receiving Party to be bound by a confidentiality agreement with the disclosing Party; (iii) is known to the receiving Party (as evidenced by its written records) prior to receipt thereof from the disclosing Party; or (iv) is required by a court of competent jurisdiction or by law to be disclosed by the receiving Party, provided that the disclosing Party is given prior written notice of such requirement.	

7.5 Relief. The Parties hereby acknowledge that the disclosing Party will be materially damaged and/or irreparably harmed by violation of the confidentiality obligations contained in this Agreement, that the unauthorized disclosure of Information to any third party may enable such party to compete unfairly, directly or indirectly, with the business of the disclosing Party, and that money damages will not be an adequate remedy.	Stipulation to a preliminary injunction. This clause can be omitted if the relevant jurisdiction provides adequate remedies.
Accordingly, in the event that either Party at any time gains knowledge of any breach of the confidentiality of, or the misappropriation of, the Information or gains knowledge of any other violation of the confidentiality obligations under this Agreement, such Party shall promptly give notice thereof to the other Party. In addition, each disclosing Party shall be entitled, without limitation of any other remedies to which it may be entitled by law, to injunctive relief, to specific performance of this Agreement, and to damages (if and as appropriate) in the event of violation of this Article 7.	Suggest specifying a time period for notification here, as “promptly” is vague.
7.6 Return of Documents. In the event this Agreement is terminated, or otherwise upon the request of the disclosing Party, each receiving Party shall promptly return to the disclosing Party all documents, notes or other materials obtained from such other Party containing any Information (including any copies thereof and including all documents or materials which may reference or incorporate such Information) or, at the other Party's direction, shall destroy all such materials. Further, each Party will provide the other Party with a statement, signed by a duly authorized officer, verifying that it has complied with the terms of this Section 7.6.	
ARTICLE 8: BREACH, DEFAULT AND TERMINATION	
8.1 Termination for Cause. Either party may terminate this Agreement at any time if the other defaults in the performance of any of its obligations under this Agreement. In such event, the Party declaring the default shall provide the other Party ("Recipient") with written notice thereof setting forth the nature of the default, and:	

(a) Recipient shall have ten (10) days from the date of the notice to cure monetary defaults; provided however, in the event of more than two monetary defaults by Licensee Manufacturer occurring in any calendar year, Licensor may terminate this Agreement in such calendar year immediately without providing Licensee Manufacturer an opportunity to cure such default; or	
(b) Recipient shall have twenty (20) days from the date of the notice to cure a non-monetary default (other than a default described in Section 8.1(c)), provided, however, that if the nature of the alleged fault is such that it cannot reasonably be cured within twenty (20) days, the Recipient may cure such default by commencing in good faith to cure such default promptly after its receipt of such written notice and prosecuting the cure of such default to completion with diligence and continuity within a reasonable time thereafter; or	
(c) in the event Licensee Manufacturer shall at any time materially breach or be in material default of any of the provisions set forth in Section 3.1(a) - (j) of this Agreement (a "Quality Default"), Licensee Manufacturer shall have ten (10) business days from the date of Licensor's notice to Licensee Manufacturer of such Quality Default to cure it; provided however, however, Licensor may terminate this Agreement immediately, without providing Licensee Manufacturer an opportunity to cure, in the event of a third Quality Default in any five (5) year term.	

8.2 Termination in Event of Bankruptcy, etc. This Agreement shall terminate automatically upon notice to a Party, in the event that with respect to such Party: (a) there is an expropriation, confiscation or nationalization by any government of a substantial portion of its assets or property; (b) it becomes insolvent; (c) it seeks relief as a debtor under any applicable bankruptcy law or other law relating to the liquidation or reorganization of debtors or to the modification or alteration of the rights of creditors or consents to or acquiesces in such relief; (d) it makes an assignment for the benefit of, or enters into a composition with, its creditors; (e) it appoints or consents to the appointment or receiver or other custodian for all or a substantial part of its assets or property; (f) a petition seeking to have it declared or adjudicated bankrupt or insolvent under any applicable bankruptcy or similar law is not dismissed within sixty (60) days after filing; (g) an order or judgment is entered by a court of competent jurisdiction for relief against it in any case commenced under any bankruptcy or similar law or finding it to be bankrupt or insolvent or ordering or approving its liquidation, reorganization or any modification of the rights of its creditors or appointing a receiver, guardian or other custodian for all or a substantial part of its assets or property; or (h) it admits its inability to pay its debts when due.	
8.3 Termination without Cause. After this Agreement has been in effect for a minimum of two (2) years, either Party may terminate this Agreement without cause upon one hundred eighty (180) days' written notice to the other Party.	Licensee Manufacturer has two years to build up the market to a place whereby the Licensor will not be incentivized to seek a successor.
8.4 Transfer of Controlling Interest in Either Party. If at any time during the Term, including any extension, there shall occur, directly or indirectly, a transfer of a controlling interest in either Party (other than the transfer to an affiliate of such Party, and excluding a transfer of a controlling interest in Entity that Controls Licensor unless the acquirer is a material competitor to Licensee Manufacturer) through sale, stock transfer, merger, or otherwise, then the other Party shall have the right to terminate this agreement upon thirty (30) days' prior written notice.	If your organization may be subject to an M&A transaction, make sure this term is compatible with the deal as you envision it.

8.5 No Waiver of Right to Terminate. Either Party's failure to exercise or delay in exercising its right of termination hereunder for any one or more causes shall not be deemed to prejudice its right of termination for such or for any other subsequent cause. Termination or expiration of this Agreement for any reason whatsoever shall not relieve the Parties from their respective obligations accruing hereunder upon or prior to such termination or expiration.	
8.6 Certain Obligations Upon Termination or Expiration. Upon any expiration or termination of this Agreement:	
(a) Licensee Manufacturer shall within one hundred eighty (180) days following the date of such expiration or termination ("Transition Period") remove from, and by the end of the Transition Period shall have ceased to use or display in any manner the Co-Brand or the Licensor Mark in connection with the Product or any product, package, label, tag, equipment, advertising or promotional medium of any kind whatsoever, or any other document, device or medium; unless the Parties expressly agree otherwise.	No mention of who bears the costs for this.
(b) No royalties shall be paid during the Transition Period in the event the Agreement is terminated before the expiration of the initial five (5) year term unless Licensor terminated the Agreement pursuant to Section 8.1 for a material, uncured breach by Licensee Manufacturer of the Agreement which is either fraudulent or in bad faith and in a circumstance where Licensee Manufacturer has deliberately attempted to frustrate the spirit and intentions of the relationship established under this Agreement. Licensor shall have the right to audit and/or inspect Licensee Manufacturer's inventory of Product during the Transition Period.	
8.7 Non-compete Restrictions Applicable Upon Termination or Expiration.	

(a) Except in the event that Licensor terminates this Agreement pursuant to Section 8.1 for a material, uncured, breach by Licensee Manufacturer of this Agreement which is either fraudulent or in bad faith and in a circumstance where Licensee Manufacturer has deliberately attempted to frustrate the spirit and intentions of the relationship established under this Agreement, then for a period of three (3) years after the termination or expiration of this Agreement, Licensor agrees not to, directly or indirectly, manufacture, market or sell product similar to the Product in the field in the Territory nor license the Licensor Mark for such use by others in the Territory.	Confidentiality terms are 5 years, which is 2 more years than this. Those would be a stronger block to technology copyists. This would apply more to other channel relationships, such as publically known distribution networks, etc.
(b) Except in the event that Licensee Manufacturer terminates this Agreement pursuant to Section 8.1 for a material, uncured, breach by Licensor of this Agreement which is either fraudulent or in bad faith, and in a circumstance where Licensor has deliberately attempted to frustrate the spirit and intentions of the relationship established under this Agreement, then for a period of three (3) years after the termination or expiration of this Agreement, Licensee Manufacturer agrees not to directly or indirectly enter into another co-branding or licensing relationship with a third party respecting use of a non-Licensee Manufacturer owned trademark in conjunction with the Licensee Manufacturer Mark, excluding such use for [a particular aspect, such as “flavor” for a food product] in connection with product similar to the Product in the field in the Territory.	
(c) Notwithstanding the foregoing, Licensor's respective obligations under Section 8.7(a) shall not prohibit Licensor, or any of its parent, subsidiary or affiliate companies from investing in or acquiring an entity which sells product in the field under trademarks other than the Licensor Mark, if	
(i) the investment or acquisition does not represent 5% or more of all votes entitled to vote for election of directors of the subject entity or other persons acting in a similar capacity, nor otherwise provides such right to elect or cause others to elect such persons or	
(ii) the product in the field business of the subject entity represents less than 10% of the total gross sales of such entity across all product and/or service lines it offers, and such entity has less than a 10% market share of product in the field in the Territory (taken as a whole, rather than market by market), at the time of Licensor's (or such parent, subsidiary or affiliate's) investment and in any event	

(iii) the Licensor Mark is not used in connection with the manufacturing, marketing or sale of product in the field by the subject entity during the period of the non-compete.	
In the event that the percentage of sales of entity, or market share, in product in the field exceed 10% at the time of investment or acquisition, Licensor will not be in breach of this Section 8.7 if Licensor either (i) discontinues product in the field sales by such entity within a commercially reasonable period of time from finalization of the acquisition or investment transaction; or (ii) divests the product in the field business (or the portion thereof in excess of the 10% limitations set forth in section 8.7(c)ii) of such entity within a commercially reasonable period of time (with commercial reasonableness determined taking into account, among other things, obtaining a commercially reasonable price for such business).	
Provided further, however, that (c)(i) and (c)(ii) above shall not be used to circumvent the intent of this provision, thus permitting Licensor to do indirectly what it is prohibited by this Section 8.7 from doing directly.	
(d) Any dispute which may arise between the parties with respect to this Section 8.7 shall be resolved by private arbitration or another mutually agreed form of private alternative dispute resolution ("ADR") before a panel of three disinterested and legally qualified adjudicators, one of which is selected by Licensor, one of which is selected by Licensee Manufacturer, and one of which is mutually agreed upon. The dispute shall be resolved utilizing such rules of evidence and procedures as are mutually agreed upon by the Parties in good faith. All costs related to the selection of the adjudicators and the proceeding itself shall be born one-half by Licensor and one-half by Licensee Manufacturer unless the adjudicators otherwise direct as part of the dispute resolution. Attorney's fees, and other costs associated with legal representation shall be borne by each of the Parties, respectively. The Parties shall use their best, commercially reasonable efforts to commence and resolve any dispute arising pursuant to this Section 8.7 within sixty (60) days of a Party's written notice of an intention to move to the formal ADR proceeding, provided that the Parties shall use their best, commercially reasonable efforts in good faith to resolve any dispute privately between them, to mutual satisfaction, in the first instance.	

ARTICLE 9: MISCELLANEOUS PROVISIONS	
9.1 No Agency. Nothing in this Agreement shall create a partnership, joint venture or establish the relationship of principal and agent or any other relationship of a similar nature between the parties. In all transactions regarding the Product or the Co-Brand, Licensee Manufacturer shall assume sole responsibility for any commitments, obligations or representations made by it in connection with the manufacture, sale, marketing, use or advertising thereof.	
9.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the Parties, pertaining to such subject matter. No amendment, supplement, modification or waiver of this Agreement shall be binding unless it is set forth in a written document signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in a written document signed by the parties hereto.	
9.3 Binding Nature of Agreement. Subject to Article 2 above, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.	
9.4 Governing Law; Good Faith Efforts to Resolve Disputes. This Agreement shall be construed in accordance with the internal laws of STATE without regard to conflict of laws principles. In the event of a controversy, claim or dispute ("Dispute") arising out of or relating to this Agreement, the Parties shall endeavor, in good faith, to expeditiously negotiate a mutually agreed resolution to that Dispute.	

9.5 Headings. The headings and captions contained in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect the interpretation of this Agreement. Unless the context otherwise specifically requires, words importing the singular include the plural and vice versa. The terms hereunder', "hereto", "herein" and similar terms relate to this entire Agreement and not to any particular paragraph or provision of this Agreement.	
9.6 Voluntary Nature of Agreement. This Agreement has been entered into after negotiation and review of its terms and conditions by parties under no compulsion to execute and deliver a disadvantageous agreement. The Agreement incorporates provisions, comments and suggestions proposed by both Parties. No ambiguity or omission in this Agreement shall be construed or resolved against either Party on the ground that this Agreement or any of its provisions was drafted or proposed by the Party.	
9.7 Notices. All notices or other communications which are required or which may be given under the provisions of this Agreement shall be in writing and shall be hand-delivered or mailed certified or registered mail, postage prepaid, as follows:	
To Licensor at : Licensor STREET CITY, STATE ##### Attention: Chief Financial Officer with copy to: Licensor STREET CITY, STATE ##### Attention: VP and General Counsel To Licensee Manufacturer at: Licensee Manufacturer Licensor STREET CITY, STATE ##### Attention: CEO with copy to: LAW FIRM Licensor STREET CITY, STATE ##### Attention: PARTNER Either Party may change its address for notice by written notice to that effect given to the other Party in accordance with this Section. All notices shall be effective upon actual receipt at the address specified.	

9.8 Remedies. Except where otherwise specifically referenced in this Agreement as an exclusive remedy, the Parties hereto shall have all remedies available at law or in equity, which remedies shall be cumulative and nonexclusive, and in addition shall be entitled to such restraining orders, injunctions, specific performance, protective orders or similar remedies as may be appropriate.	
9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Digital signatures will be accepted, provided the originally signed documents are delivered on the following business day.	
9.10 Initial Transition Period. Licensee Manufacturer currently markets product in the field under the Licensee Manufacturer Mark in the Territory, and the Parties recognize that a transition period is necessary to replace the product in the field sold under the Licensee Manufacturer Mark with Product sold under the Co-Brand. The Parties agree that it is their mutual intent that the transition be completed at the earliest possible date following execution of this Agreement (with 90 days to be the target date), with the Parties exercising their best efforts, taking into account: (a) utilization of existing inventory of product in the field currently marketed under the Licensee Manufacturer Mark; (b) preparation of the packaging and advertising material to market the Product; (c) effecting a smooth transition to the Product so as not to adversely affect current customers of product in the field sold under the Licensee Manufacturer Mark; and (d) assuring effective distribution of the Product.	
IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound thereby, have executed this Agreement by their duly authorized representatives to be effective as of the day and year first above written.	
By: Licensor _____ Printed Name: _____	By: Licensee Manufacturer _____ Printed Name: _____

Signature: Title: Date:	Signature: Title: Date:	

ANNEX A: TO CO-BRAND LICENSE AGREEMENT

PRESENTATION OF CO-BRAND

ANNEX B: TO CO-BRAND LICENSE AGREEMENT

LICENSOR LOGO

ANNEX C: TO CO-BRAND LICENSE AGREEMENT

LICENSEE MANUFACTURER QUALITY REQUIREMENTS MANUAL